164

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No. 09-870

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

AMANDA ARMSTRONG; HUI MIN ZHAO;
XIU ZHEN QI; MEN LIAN CHEN;
EDWARD LIEBERMAN; JOHN DOES,
Petitioners,

v.

COMMONWEALTH OF THE NORTHERN MARIANA
ISLANDS; DEPARTMENT OF FINANCE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
I. SUMMARY OF REPLY	1
II. THE TEXT, CONTEXT, AND LEGISLATIVE HISTORY OF COVENANT SECTION 601(a) REFLECT CONGRESSIONAL INTENT FOR FEDERAL JUDICIAL OVERSIGHT OF THE NMTIT	4
A. The Wording and Legislative History of Covenant Section 601(a) Establish that Both the NMI and Congress Intended Federal Court Supervision of the NMTIT Just "As Those Laws Are in Force in Guam"	5
B. The Use of the Word "Local" in Covenant Section 601(a) Does Not Reveal Any Congressional Intent for the CNMI Mirror Code System to Operate Differently than the Guam Mirror Code System	8
III. IF FEDERAL COURT JURISDICTION IS FORECLOSED BY CNMI LEGISLATION, THERE CAN BE NO FEDERAL REVIEW OF THE CNMI'S ENFORCEMENT AND APPLICATION OF THE INTERNAL REVENUE CODE FOR ALL RESIDENTS OF THE CNMI	10
CONCLUSION	12
SUPPLEMENTAL APPENDIX	1a

TABLE OF CONTENTS—Continued

Page

SUPPLEMENTAL APPENDIX A: Office for Micronesian Status Negotiations, Mariana Political Status Negotiations, Fifth Round Draft Submission of the Covenant, December 1974, *reprinted in* Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular affairs on H.J. Res. 549 *et al.*, to Approve the Covenant to Establish the Northern Mariana Islands, 94th Cong. 1st Sess. (1975) 1a

SUPPLEMENTAL APPENDIX B: 48 U.S.C. § 1421i..... 13a

SUPPLEMENTAL APPENDIX C: S. Rep. No. 90-2176 (1958)..... 19a

TABLE OF AUTHORITIES

FEDERAL CASES — Page

Armstrong et al. v. Commonwealth of the N. Mariana Islands, 576 F.3d 950 (9th Cir. 2009) 2, 3, 5

Burnet v. Harmel, 287 U.S. 103 (1932) 10

Holbrook v. Taitano, 125 F. Supp. 14 (D. Guam 1954) 9

Jerome v. United States, 318 U.S. 101 (1943) 9

Laguana v. Ansell, 102 F. Supp. 919 (D. Guam 1952) 9

Morgan v Commissioner, 309 U.S. 78 (1940) 10

United States v. Pelzer, 312 U.S. 399 (1941) 10

Wilson v. Kennedy, 123 F. Supp 156 (D. Guam 1954) 9

FEDERAL STATUTES

Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, *reprinted in* 48 U.S.C. § 1801 (Note) ..... supra

48 U.S.C. § 1421i 6, 7, 10

48 U.S.C. § 1421i(e) 5, 7

48 U.S.C. § 1421i(h) 7, 8, 10

48 U.S.C. § 1424 7

TABLE OF AUTHORITIES—Continued

MISCELLANEOUS Page

Marianas Political Status Commission, Section by Section Analysis of the Covenant to Establish the Commonwealth of the Northern Mariana Islands, *reprinted in* Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 *et al.* to Approve the Covenant to Establish the Northern Mariana Islands, 94th Cong., 1st Sess., 645 (1975) 2

N. Mariana Islands Comm'n on Fed. Laws, *Welcoming America's Newest Commonwealth*, Second Interim Report of the N. Mariana Islands Comm'n on Fed. Laws to the Congress of the United States, at 436 (August 1985) 7, 8

Office for Micronesian Status Negotiations, Mariana Political Status Negotiations, Fifth Round Draft Submission of the Covenant, December 1974, *reprinted in* Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular affairs on H.J. Res. 549 *et al.*, to Approve the Covenant to Establish the Northern Mariana Islands, 94th Cong., 1st Sess., at 279 (1975) 6

Auditor's Report of 2005, Northern Marianas Government Owes over $24 Million in Tax Rebates, *Tax Notes Int'l*, August 28, 2006 (Dec. 2006) 3

IN THE

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONERS

I. SUMMARY OF REPLY

In its opposition brief, respondent Commonwealth of the Northern Mariana Islands ("CNMI") acknowledges that the Ninth Circuit's decision in this case creates an income tax structure in the CNMI that is wholly different from the tax structure in Guam and other U.S. mirror-code possessions. *See, e.g.*, Resp. Br. at 11-12. Although Congress has imposed federal judicial oversight on Guam and other U.S. mirror-code possessions, the CNMI insists—and the Ninth Circuit agreed—that no such federal oversight applies to the mirror-code tax system of the CNMI.

Instead, according to the CNMI and the Ninth Circuit's decision in this case, Congress gave the CNMI a coveted authorization to implement the United States Internal Revenue Code ("IRC") as "a local territorial income tax subject to [exclusive] local court jurisdiction." Resp. Br. at 9; *see also Armstrong et al. v. Commonwealth of the N. Mariana Islands*, 576 F.3d 950, 956-57 (9th Cir. 2009).

Review is warranted because the Ninth Circuit is simply wrong. Nothing in the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," *reprinted in* 48 U.S.C. § 1801 (Note), reflects any congressional authorization for the CNMI to establish a mirror-code tax system that is uniquely exempt from the supervision of the federal courts. The opposite is true. Both the text and the history of the Covenant reflect a strong congressional intent to maintain uniformity among the mirror-code tax systems in general and between the CNMI and Guam in particular. Covenant section 601(a) achieves that goal by a direct statutory reference to the mirror-code tax system in force in Guam, which includes exclusive federal court supervision.[1] The Ninth Circuit's decision allowing the CNMI to execute its mirror-code tax system as a local law subject to exclusive

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[1] *See, e.g.*, Marianas Political Status Commission, Section by Section Analysis of the Covenant to Establish the Commonwealth of the Northern Mariana Islands, *reprinted in* Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 *et al.* to Approve the Covenant to Establish the Northern Mariana Islands, 94th Cong., 1st Sess., 645 (1975) ("It is desirable that Guam and the Northern Marianas have coordinated tax laws since they operate in the same economic and geographic sphere.").

CNMI local court jurisdiction directly conflicts with congressional intent that the income tax system "in force in" the CNMI be implemented "in the same manner as Guam." It also disregards federal precedents recognizing the inherent federal character of the IRC when applied as a local territorial income tax.

Review further is warranted because the Ninth Circuit's decision has far-reaching consequences. In urging this Court to deny review, the CNMI repeatedly offers assurances that federal law constrains the CNMI legislature's authority to modify the IRC as it applies to CNMI residents filing their U.S. income tax returns with the local CNMI tax agency. *See, e.g.*, Resp. Br. at 22-25. At the same time, however, the CNMI vigorously argues that it possesses authority to exclude the federal courts from supervising alleged conflicts between the IRC, on the one hand, and CNMI legislation and administrative and judicial decisions applying the Northern Mariana Territorial Income Tax ("NMTIT"), on the other hand. *See id.* at 11-12. In this case, for example, the CNMI argues and the Ninth Circuit held that only the CNMI territorial courts have subject-matter jurisdiction to review petitioners Armstrong *et al.*'s challenges to the NMTIT's compliance with the IRC and federal legislation restricting the CNMI's grant of income tax rebates.[2] *See id.* at 17; *Armstrong*, 576 F.3d at 956-

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[2] Petitioners' claims for relief are based directly on alleged conflicts with federal law. The conflicts were revealed and documented by the United States Department of the Interior ("DOI") in an auditor's report conducted by Deloitte and Touche, LLP and published by the DOI. *See* Auditor's Report of 2005, Northern Marianas Government Owes over $24 Million in Tax Rebates, *Tax Notes Int'l*, August 28, 2006 (Dec. 2006).

57. In other cases arising from taxpayer returns filed with the CNMI equally or more important issues of federal taxation will be placed beyond federal court review. *See, e.g.*, Resp. Br. at 22-23 (discussing those provisions).

Under Covenant section 403, there is no avenue for federal court review of decisions of the CNMI local territorial courts except by writ of certiorari to this Court for cases involving federal questions. As a result, under the Ninth Circuit's decision, the world-wide U.S. tax liability for CNMI residents will be a local issue largely insulated from federal review. In view of the importance of the issues presented, this Court should grant the petition for a writ of certiorari and reverse the decision below.

II. THE TEXT, CONTEXT, AND LEGISLATIVE HISTORY OF COVENANT SECTION 601(a) REFLECT CONGRESSIONAL INTENT FOR FEDERAL JUDICIAL OVERSIGHT OF THE NMTIT

In urging that Congress intended to create a unique mirror-code tax system in the CNMI, the CNMI—like the Ninth Circuit below—relies solely on the text of section 601(a) of the Covenant. Covenant section 601(a) provides:

> "The income tax laws in force in the United States will come into force in the Northern Mariana Islands as a *local territorial income tax* on the first day of January following the effective date of this Section, *in the same manner as those laws are in force in Guam.*"

48 U.S.C. § 1801 (Note) (Covenant § 601(a) (emphasis added).

Although Covenant section 601(a) appears to prescribe the same mirror-code system as applies to Guam, the CNMI and the Ninth Circuit take a very different view. *See, e.g., Armstrong*, 576 F.3d at 957-56 (interpreting that statute). According to the CNMI, the statutory phrase "in the same manner as those laws are in force in Guam" refers to only the "implementation of a substitution of terms structure" to adopt the IRC as the law of the CNMI. *See* Resp. Br. at 13-14. The CNMI also relies solely on the reference to the enforcement of applicable IRC provisions as a "local" territorial tax to urge that Congress intended to create a different mirror-code system in the CNMI than the mirror-code system applicable to Guam and other U.S. insular territories. *See id.* at 11-12. Neither the plain text of Covenant section 601(a) nor its history supports the CNMI's position.

A. The Wording and Legislative History of Covenant Section 601(a) Establish that Both the NMI and Congress Intended Federal Court Supervision of the NMTIT Just "As Those Laws Are in Force in Guam"

Although the CNMI urges that the statutory phrase "in the same manner as those laws are in force in Guam" refers to only the substitution of terms in Guam's mirror-code system under 48 U.S.C. § 1421i(e), nothing in the text or history of Covenant section 601(a) suggests such a limitation. The text of Covenant section 601(a) prescribes the same mirror-code system for the CNMI as exists in Guam without any qualification. The legislative history of Covenant 601(a)—as well as congressional reports interpreting that provision—confirm that Congress intended for all provisions of the mirror-code system under the

Guam Organic Act, 48 U.S.C. § 1421i, to apply with equal force to the CNMI.

Covenant section 601 was drafted, in substantially the form in which it was enacted by Congress, in the Fifth Round of Covenant Negotiations by the Office for Micronesian Status Negotiations and the Marianas Political Status Commission. The Fifth Round draft submitted to Congress contained a version of Covenant section 601(a) that was identical to the version of Covenant section 601(a) ultimately enacted by Congress, with the omission of one parenthetical. The draft makes clear that the negotiating parties expressly contemplated that the statutory framework for applying the IRC to Guam—including exclusive federal court jurisdiction over all disputes involving Guam's territorial income tax—would apply equally in the CNMI.

The Fifth Round draft of section 601(a) recited:

> "The income tax laws in force in the United States will come into force in the Northern Mariana Islands as a local territorial income tax on the first day of January following the effective date of this Section, in the same manner as those laws are in force in Guam (*under the provisions of Section 1421i of title 48, United States Code*)."

See Supp. Appendix A at 11a (emphasis added).

That parenthetical shows that the drafters expressly intended for the CNMI's mirror-code system to adopt *all* provisions of Guam's mirror-code system under 48 U.S.C. § 1421i, rather than only the substitution of terms provision under 48 U.S.C. § 1421i(e) as the CNMI contends.

At the time of the Fifth Round of Negotiations—as it does today—48 U.S.C. § 1421i included subparagraphs § 1421i(h)(1) and (2) conferring the U.S. District Court of Guam with exclusive original jurisdiction over all matters arising under the local Guam territorial income tax. Specifically, 48 U.S.C. § 1421i(h) provides, in part:

> (h) Jurisdiction of District Court; suits for recovery or collection of taxes; payment of judgment.
>
> (1) Notwithstanding any provision of section 22 of this Act [48 USCS § 1424] or any other provision of law to the contrary, the District Court of Guam shall have *exclusive original jurisdiction over all judicial proceedings in Guam, both criminal and civil, regardless of the degree of the offense or of the amount involved, with respect to the Guam Territorial income tax.*
>
> (2) Suits for the recovery of any Guam Territorial income tax alleged to have been erroneously or illegally assessed or collected . . . under the income-tax laws in force in Guam . . . may, regardless of the amount of claim, be maintained against the government of Guam . . . in the United States district court with respect to the United States income tax. . . .

(Emphasis added.)

Although Covenant section 601(a) ultimately was adopted without the parenthetical reference to 48 U.S.C. § 1421i, nothing in the legislative history suggests that the deletion of the parenthetical reference intended any substantive change. Indeed, as the CNMI acknowledges (Resp. Br. at 15-16), a subsequent report of the Northern Mariana Islands

Commission on Federal Laws to the U.S. Congress expressly stated that "[t]he District Court for the Northern Mariana Islands has civil and criminal jurisdiction over disputes involving the local territorial income taxes of the Northern Mariana Islands." *See* N. Mariana Islands Comm'n on Fed. Laws, *Welcoming America's Newest Commonwealth*, Second Interim Report of the N. Mariana Islands Comm'n on Fed. Laws to the Congress of the United States, at 436 (August 1985). Although the CNMI discounts the significance of this report by arguing that it "improper[ly]" cited Guam law as support for its jurisdictional statement, the citation to Guam law is consistent with Covenant section 601(a). Covenant section 601(a) expressly provides the CNMI's mirror-code system is to operate "in the same manner as those laws are in force in Guam" and, consequently, the judicial structure for enforcing the mirror code in Guam is the same judicial structure that applies to the CNMI.

B. The Use of the Word "Local" in Covenant Section 601(a) Does Not Reveal Any Congressional Intent for the CNMI Mirror-Code System to Operate Differently than the Guam Mirror-Code System

The CNMI also relies on Covenant section 601(a)'s direction for the IRC to be enforced as a "local" territorial income tax in the CNMI to argue that Congress intended for the CNMI's mirror-code system to operate as a local law subject to the exclusive jurisdiction of CNMI local territorial courts, in contrast to the mirror-code system applicable in Guam. *See*, *e.g.*, Resp. Br. at 4. But the CNMI—like the Ninth Circuit—reads too much into that statutory phrase.

No language in Covenant section 601(a) refers to the CNMI legislature or requires the CNMI legislature to enact the NMTIT. No language in Covenant section 601(a) grants the CNMI legislature any authority to determine the scope or content of the IRC or the jurisdiction of the federal courts. Instead, Covenant section 601(a) simply provides that the IRC "will come into force" as a local territorial income tax just as the IRC came into force in Guam as a local territorial income tax.

The plain meaning of the phrase "will come into force" is clear. Congress imposed the IRC on the CNMI as its local territorial income tax. That application is not dependent on the will or preferences of the CNMI legislature. In the absence of any clear indication of such intent, this Court generally assumes that "Congress when it enacts a statute is not making the application of the federal act dependent on state law." *Jerome v. United States*, 318 U.S. 101, 104 (1943).

To support its contrary construction of this federal statute, the CNMI seeks to distinguish judicial precedents prior to 1958 recognizing the Guam mirror-code system as federal law.[3] The CNMI argues that these cases are inapposite because, according to the CNMI, the jurisdiction of the U.S. District Court of Guam for those cases was granted by 48 U.S.C. § 1421i(h). *See* Resp. Br. at 7-8, 11-12. The CNMI is mistaken. 48 U.S.C. § 1421i was not adopted until 1958, and it was adopted expressly for the purpose of

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[3] Those precedents include *Laguana v. Ansell*, 102 F. Supp. 919 (D. Guam 1952), *Wilson v. Kennedy*, 123 F. Supp 156 (D. Guam 1954), and *Holbrook v. Taitano*, 125 F. Supp. 14 (D. Guam 1954).

ratifying and confirming the prior decisions of the U.S. District Court of Guam and the Ninth Circuit exercising jurisdiction over suits against Guam arising out of the enforcement or administration of the Guam territorial income tax. *See* Supp. Appendix C at 31a.

Finally, the CNMI's and the Ninth Circuit's view of Covenant section 601(a) ignores the fact that federal judicial supervision is an important component of the well-established principle of "uniformity of national taxation." *See, e.g., United States v. Pelzer*, 312 U.S. 399, 402-03 (1941) ("But as we have often had occasion to point out, the revenue laws are to be construed in the light of their general purpose to establish a nationwide scheme of taxation uniform in its application. Hence their provisions are not to be taken as subject to state control or limitation unless the language or necessary implication of the section involved makes its application dependent on state law." (citing *Burnet v. Harmel*, 287 U.S. 103, 110 (1932); *Morgan v Commissioner*, 309 U.S. 78, 81 (1940)). The term "local" in Covenant section 601(a) simply references the undisputed fact that the IRC applies to the CNMI as a local territorial tax just as it does in Guam.

III. IF FEDERAL COURT JURISDICTION IS FORECLOSED BY CNMI LEGISLATION, THERE CAN BE NO FEDERAL REVIEW OF THE CNMI'S ENFORCEMENT AND APPLICATION OF THE INTERNAL REVENUE CODE FOR ALL RESIDENTS OF THE CNMI

The CNMI's opposition to this Court's review protests that so many federal statutes apply, or are intended to apply, to regulate the application of the

IRC in the CNMI that this Court should permit the CNMI legislature to make the conclusive determination that "there is not a documented need or legal foundation for the extension of federal jurisdiction into this small local tax system." Resp. Br. at 9, 22-25. But pervasive regulation of the application of the IRC to the CNMI only supports federal jurisdiction.

There is no federal court review of decisions of the CNMI Superior and Supreme Courts save by writ of certiorari to this Court under Covenant section 403. The CNMI's position, sustained by the Ninth Circuit panel decision below, for all practical purposes limits judicial review over the application and interpretation of the IRC to CNMI residents to the local CNMI courts. Such a limitation has far-reaching implications. If allowed to stand, the Ninth Circuit's decision provides that the CNMI local territorial courts have exclusive authority to control not only decisions respecting locally-sourced income (including the important determination of what is locally-sourced and what is not), as the CNMI contends (Resp. Br. at 24), but all other U.S.-sourced and world-wide income of the CNMI "resident."

CONCLUSION

The plain wording and the history of the negotiation of Covenant section 601(a) establish that the Northern Mariana Islands and the United States bargained for and intended to implement federal judicial supervision of the application of the IRC as the CNMI territorial income tax, contrary to the decision of the Ninth Circuit panel. The strong potential for conflicts between the established policy of national uniformity in the application of the IRC and the unreviewable decisions of the local CNMI courts—along with the potential for resulting tax evasion or avoidance, intentional or not, from the panel's refusal to exercise federal jurisdiction—warrants discretionary review by this Court. For those reasons stated in this brief and in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

APPENDIX TABLE OF CONTENTS

Page

SUPPLEMENTAL APPENDIX A: Office for Micronesian Status Negotiations, Mariana Political Status Negotiations, Fifth Round Draft Submission of the Covenant, December 1974, *reprinted in* Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular affairs on H.J. Res. 549 *et al.*, to Approve the Covenant to Establish the Northern Mariana Islands, 94th Cong. 1st Sess. (1975) 1a

SUPPLEMENTAL APPENDIX B: 48 U.S.C. § 1421i..... 13a

SUPPLEMENTAL APPENDIX C: S. Rep. No. 90-2176 (1958)..... 19a

SUPPLEMENTAL APPENDIX A

TO APPROVE "THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS," AND FOR OTHER PURPOSES

HEARING BEFORE THE SUBCOMMITTEE ON TERRITORIAL AND INSULAR AFFAIRS OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

Ninety-Fourth Congress

First Session

On

H.J. Res. 549, H.J. Res. 550, and H.J. Res. 547

TO APPROVE THE "COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA," AND FOR OTHER PURPOSES

Hearing Held In Washington. D.C.
July 14, 1975

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* * *

FINAL JOINT COMMUNIQUE ISSUED BY THE UNITED STATES AND THE MARIANAS POLITICAL STATUS COMMISSION ON DECEMBER 19, 1974

From December 5 through December 19, 1974, the Marianas Political Status Commission and the United States Delegation met for the fifth session of negotiations aimed at achieving the long held desire of the people of the Northern Mariana Islands for political union with the United States of America.

An opening plenary meeting was held on December 5 at which Ambassador F. Haydn Williams, the President's Personal Representative, and Senator Edward DLG Pangelinan, Chairman of the Marianas Political Status Commission spoke about the progress of the negotiations and the issues on the agenda for the fifth session. Following that meeting, working sessions of the commission and the U.S. Delegation were held almost daily. These working meetings were devoted largely to a review of a draft status agreement (to be known as the Covenant) and to a discussion of the terms upon which land needed by the United States for defense purposes would be made available to the United States. The effect of the revised U.S. plans for Tinian was discussed as well. Finally, a number of issues relating to the transition of the Northern Mariana Islands to its new political statue were considered.

Agreement was reached between the United States and the Commission on virtually all issues which have been raised in these negotiations. These agreements are reflected in this Joint Communique and in the attached draft Commonwealth Covenant.

COMMONWEALTH COVENANT

At the conclusion of the fourth session of these negotiations a Joint Drafting Committee was established and charged with the preparation of a draft agreement for the consideration of the principals. The draft produced by the Committee reflected areas of preliminary agreement and areas where further discussion by the principals was required. Discussions during this session of talks have resulted in provisional agreement on the attached draft "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America".

This agreement is provisional due to the desire of each party to review carefully certain sections of the Covenant before signature. In the case of the United States such review would include further consultations with the United States Congress. The Commission will review the provisional agreement with the Marianas District Legislature and others in the Northern Mariano Islands. Additionally, the attached draft is subject in its entirety to a thorough technical review by both parties. Following signature the Covenant will be formally submitted to the Marianas District Legislature and to the people of the Marianas for their approval and then to the U.S. Congress.

In previous negotiating sessions agreement in principle had been tentatively reached on issues such as the nature of the political relationship between the Northern Marianas and the United States, local self-government, U.S. citizenship or nationality for Marianas residents, United States financial assistance, application of federal laws, taxation, the jurisdiction in the Northern Marianas of United States courts and the extent of U.S. military land require-

ments. During this session those agreements were expanded or modified where necessary and reduced to the language contained in the draft Covenant. In the case of United States military land requirements agreement was reached for the first time on price and method of acquisition. Agreement was also reached on increased levels of direct U.S. financial assistance, in the amounts and for the purposes indicated below.

* * * * *

The United States Delegation wishes to record their sincere appreciation for the warm and gracious hospitality they have once again been accorded by the members of the Marianas Political Status Commission and the people of the Marianas. Both parties wish to express their thanks to the High Commissioner and the Marianas District Administrator, and their respective staffs, and to the Saipan Municipal Council for the support they have provided throughout these talks.

Dated: December 19, 1974

For the Marianas Political Statue Commission:

/s/ Edward DLG Pangelinan
Edward DLG. Pangelinan, Chairman,
Marianas Political Status Commission

/s/ Vincente N. Santos,
Vicente N. Santos, Co-Chairman,
Marianas Political Status Commission

For the United States:

/s/ Franklin Haydn Williams
Franklin Haydn Williams,
The President's Personal
Representative for Micronesian
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APPENDIX

DRAFT - December 19, 1974

COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

Whereas, the Charter of the United Nations and the Trusteeship Agreement between the Security Council of the United Nations and the United States of America guarantee to the people of the Northern Mariana Islands the right freely to express their wishes for self-government or independence; and

Whereas, the United States supports the desire of the people of the Northern Mariana Islands to exercise their inalienable right of self-determination; and

Whereas, the people of the Northern Mariana Islands and the people of the United States share the goals and values found in the American system of government based upon the principles of government by consent, individual freedom and democracy; and

Whereas, for over twenty years, the people of the Northern Mariana Islands, through public petition and referendum, have clearly expressed their desire for political union with the United States;

Now, therefore, the Marianas Political Status Commission, being the duly appointed representative of the people of the Northern Mariana Islands, and the Personal Representative of the President of the United States have entered into this Covenant in order to establish a self-governing commonwealth for the Northern Mariana Islands within the American political system and to define the future relationship between the Northern Mariana Islands and the

United States. This Covenant will be mutually binding when it is approved by the United States, by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands in a plebiscite, constituting on their part a sovereign act of self-determination.

* * * * *

ARTICLE VI

Revenue and Taxation Provisions

Section 601

(a) The income tax laws in force in the United States will be in force in the Northern Mariana Islands as a local territorial income tax in the same manner as those laws are in force in Guam (under the provisions of Section 1421i of title 48, United States Code).

(b) Any individual who is a citizen or a resident of the United States, of Guam or of the Northern Mariana Islands (including a national of the United States who is not a citizen), will file only one income tax return with respect to his income, in a manner similar to the provisions of Section 935 of title 26, United States Code.

(c) References in the Internal Revenue Code to Guam will be deemed also to refer to the Northern Mariana Islands, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof or of this Covenant.

Section 602 The Government of the Northern Mariana Islands may by local law impose such additional taxes as it deems appropriate and provide for the rebate of taxes received by it, but the power of the Government of the Northern Mariana Islands to

rebate collections of the local territorial income tax received by it, will be limited to taxes on income derived from sources within the Northern Mariana Islands.

SUPPLEMENTAL APPENDIX B

48 U.S.C. § 1421i

§ 1421i. Income tax

(a) Applicability of Federal laws; separate tax. The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam: *Provided*, That notwithstanding any other provision of law, the Legislature of Guam may levy a separate tax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the Government of Guam.

(b) Guam Territorial income tax. The income-tax laws in force in Guam pursuant to subsection (a) of this section shall be deemed to impose a separate Territorial income tax, payable to the government of Guam, which tax is designated the "Guam Territorial income tax".

(c) Enforcement of tax. The administration and enforcement of the Guam Territorial income tax shall be performed by or under the supervision of the Governor. Any function needful to the administration and enforcement of the income-tax laws in force in Guam pursuant to subsection (a) of this section shall be performed by any officer or employee of the government of Guam duly authorized by the Governor (either directly, or indirectly by one or more redelegations of authority) to perform such function.

(d) "Income-tax laws" defined; administration and enforcement; rules and regulations.

(1) The income-tax laws in force in Guam pursuant to subsection (a) of this section include but are not limited to the following provisions of the Internal

Revenue Code of 1954 [Internal Revenue Code of 1986], where not manifestly inapplicable or incompatible with the intent of this section: Subtitle A [26 USCS §§ 1 *et seq.*] (not including chapter 2 and section 931 [26 USCS §§ 1401 *et seq.* and 931]); chapters 24 and 25 of subtitle C [26 USCS §§ 3401 *et seq.* and 3501 et seq.], with reference to the collection of income tax at source on wages; and all provisions of subtitle F [26 USCS §§ 6001 et seq.] which apply to the income tax, including provisions as to crimes, other offenses, and forfeitures contained in chapter 75 [26 USCS §§ 7201 *et seq.*]. For the period after 1950 and prior to the effective date of the repeal of any provision of the Internal Revenue Code of 1939 which corresponds to one or more of those provisions of the Internal Revenue Code of 1954 [Internal Revenue Code of 1986] which are included in the income-tax laws in force in Guam pursuant to subsection (a) of this section, such income-tax laws include but are not limited to such provisions of the Internal Revenue Code of 1939.

(2) The Governor or his delegate shall have the same administrative and enforcement powers and remedies with regard to the Guam Territorial income tax as the Secretary of the Treasury, and other United States officials of the executive branch, have with respect to the United States income tax. Needful rules and regulations not inconsistent with the regulations prescribed under section 7654(e) of the Internal Revenue Code of 1954 [1986] [26 USCS § 7654(e)] for enforcement of the Guam Territorial income tax shall be prescribed by the Governor. The Governor or his delegate shall have authority to issue, from time to time, in whole or in part, the text of the income-tax laws in force in Guam pursuant to subsection (a) of this section.

(3) In applying as the Guam Territorial income tax the income-tax laws in force in Guam pursuant to subsection (a) of this section, the rate of tax under sections 871, 881, 884, 1441, 1442, 1443, 1445, and 1446 of the Internal Revenue Code of 1986 [26 USCS §§ 871, 881, 884, 1441, 1442, 1443, 1445, 1446] on any item of income from sources within Guam shall be the same as the rate which would apply with respect to such item were Guam treated as part of the United States for purposes of the treaty obligations of the United States. The preceding sentence shall not apply to determine the rate of tax on any item of income received from a Guam payor if, for any taxable year, the taxes of the Guam payor were rebated under Guam law. For purposes of this subsection, the term "Guam payor" means the person from whom the item of income would be deemed to be received for purposes of claiming treaty benefits were Guam treated as part of the United States.

(e) Substitution of terms. In applying as the Guam Territorial income tax the income-tax laws in force in Guam pursuant to subsection (a) of this section, except where it is manifestly otherwise required, the applicable provisions of the Internal Revenue Codes of 1954 [1986] and 1939, shall be read so as to substitute "Guam" for "United States", "Governor or his delegate" for "Secretary or his delegate", "Governor or his delegate" for "Commissioner of Internal Revenue" and "Collector of Internal Revenue", "District Court of Guam" for "district court" and with other changes in nomenclature and other language, including the omission of inapplicable language, where necessary to effect the intent of this section.

(f) Criminal offenses; prosecution. Any act or failure to act with respect to the Guam Territorial income

tax which constitutes a criminal offense under chapter 75 of subtitle F of the Internal Revenue Code of 1954 [1986] [26 USCS §§ 7201 *et seq.*], or the corresponding provisions of the Internal Revenue Code of 1939, as included in the income-tax laws in force in Guam pursuant to subsection (a) of this section, shall be an offense against the government of Guam and may be prosecuted in the name of the government of Guam by the appropriate officers thereof.

(g) Liens. The government of Guam shall have a lien with respect to the Guam Territorial income tax in the same manner and with the same effect, and subject to the same conditions, as the United States has a lien with respect to the United States income tax. Such lien in respect of the Guam Territorial income tax shall be enforceable in the name of and by the government of Guam. Where filing of a notice of lien is prescribed by the income-tax laws in force in Guam pursuant to subsection (a) of this section, such notice shall be filed in the Office of the Clerk of the District Court of Guam.

(h) Jurisdiction of District Court; suits for recovery or collection of taxes; payment of judgment.

(1) Notwithstanding any provision of section 22 of this Act [48 USCS § 1424] or any other provision of law to the contrary, the District Court of Guam shall have exclusive original jurisdiction over all judicial proceedings in Guam, both criminal and civil, regardless of the degree of the offense or of the amount involved, with respect to the Guam Territorial income tax.

(2) Suits for the recovery of any Guam Territorial income tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to

have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, under the income-tax laws in force in Guam, pursuant to subsection (a) of this section, may, regardless of the amount of claim, be maintained against the government of Guam subject to the same statutory requirements as are applicable to suits for the recovery of such amounts maintained against the United States in the United States district court with respect to the United States income tax. When any judgment against the government of Guam under this paragraph has become final, the Governor shall order the payment of such judgments out of any unencumbered funds in the treasury of Guam.

(3) Execution shall not issue against the Governor or any officer or employee of the government of Guam on a final judgment in any proceeding against him for any acts or for the recovery of money exacted by or paid to him and subsequently paid into the treasury of Guam, in performing his official duties under the income-tax laws in force in Guam pursuant to subsection (a) of this section, if the court certifies that—

(A) probable cause existed; or

(B) such officer or employee acted under the directions of the Governor or his delegate. When such certificate has been issued, the Governor shall order the payment of such judgment out of any unencumbered funds in the treasury of Guam.

(4) A civil action for the collection of the Guam Territorial income tax, together with fines, penalties, and forfeitures or for the recovery of any erroneous refund of such tax, may be brought in the name of and by the government of Guam in the District Court of Guam or in any district court of the United States

or in any court having the jurisdiction of a district court of the United States.

(5) The jurisdiction conferred upon the District Court of Guam by this subsection shall not be subject to transfer to any other court by the legislature, notwithstanding section 22(a) of this Act [48 USCS § 1424(a)].

SUPPLEMENTAL APPENDIX C

GUAM—INCOME TAX

GUAM—INCOME TAX

For text of Act see p. 798

Senate Report No. 2176, Aug. 4, 1958
[To accompany H.R. 12569]

House Report No. 2273, July 24, 1958
[To accompany H.R. 12569]
The Senate Report is set out.

Senate Report No. 2176

THE committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 12569) to amend section 31 of the Organic Act of Guam, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY

Purpose

The purpose of H.R. 12569 is to clarify and restate section 31 of the Organic Act of Guam and to ratify assessments and collections of income taxes that have heretofore been made by the Guamanian authorities under section 31. The bill allows suits against the government of Guam to recover taxes erroneously or illegally collected or assessed. Such suits would be subject to the same statutory requirements as apply in suits against the United States with respect to the United States income tax.

Need

Ever since section 31 was enacted in 1951, the government of Guam has been harassed by litigation

founded principally on the contentions that section 31 gave it no authority to assess and collect these taxes and that, even if it did have this authority, the taxpayers (or most of them) were exempt from payment thereof by section 931 of the Internal Revenue Code of 1954 or section 251 of the 1939 code. Judicial decisions in the United States District Court for the District of Guam and in the Court of Appeals for the Ninth Circuit have sustained the Guamanian government's position, but a number of suits for refund are now pending in the court of claims which, in a recent preliminary ruling in *Jennings v. United States*, has indicated that it may not agree with the ninth circuit. Should the plaintiffs prevail in the Court of Claims and should a judgment in their favor be sustained by the Supreme Court, the revenues of the government of Guam could be reduced by more than $3 million a year, a substantial number of taxpayers would escape payment of all income taxes, and the whole financial structure of Guam would be thrown into confusion. While the committee expects to survey the entire Guamanian tax and financial picture during the next Congress, the present need for H.R. 12569 is obviously urgent.

Cost

Enactment of H.R. 12569 will entail no cost to the United States. However, the bill could save the Treasury an amount of money estimated by the Governor of Guam to be $23 million and estimated by the opponents of the bill to be $8 million.

LEGISLATIVE HISTORY

Departmental recommendation

H.R 12569 was introduced at the request of the Secretary of the Interior made in an executive

communication dated May 1, 1958. It is favored by the legislative and executive branches of the government of Guam. There was also made available to the committee a petition favoring this type of legislation, which petition bears the signatures of more than 5,000 Guamanians

House amendment to section 2

The House of Representatives adopted an amendment of section 2 of H.R. 12569 designed (1) to bring it more closely into line with congressional precedents the constitutionality of which was sustained in *United States v. Heinszen & Co*, (206 U.S. 370, 27 S.Ct. 742, 51 L.Ed. 1098(1907)) and *Rafferty v. Smith, Bell & Co.* (257 U.S. 226, 42 S.Ct. 71, 66 L.Ed. 208 (1921)), and (2) to avoid any possible conflict with the *ex post facto* clause of article I, section 9, of the Constitution by providing that no penalties shall be assessed against any taxpayer for his failure to comply with the income tax laws and regulations of Guam in those circumstances, if any, where it is judicially determined that such compliance could not have been required under section 31 prior to its amendment.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill is an amendment of section 31 of the Organic Act of Guam. Subsection (a) is a reiteration of the present text of section 31. Subsection (b) declares that the income taxes imposed by virtue of the act shall be deemed to be a territorial income tax. Subsection (c) provides for administration and enforcement of the tax by the Governor of Guam and those to whom he delegates his authority.

Subsection (d) (I) provides that the income-tax laws in force in Guam shall include all provisions of

subtitle A of the Internal Revenue Code of 1954 which are not manifestly inapplicable or incompatible with the intent of section 1 of the bill. To the extent that they are not manifestly inapplicable or incompatible, the income tax laws in force in Guam are declared to include all provisions of law relating to the withholding of income tax which are set forth in chapters 24 and 25 of subtitle C of the 1954 code and all provisions of law relating to administration of the income tax (including income tax withholding) which are set forth in subtitle F of the 1954 code. The corresponding provisions of the 1939 code are also included in the income-tax laws in force in Guam for the appropriate period, that is, from the time when the provisions of present section 31 of the Organic Act of Guam became operative until the effective date of those provisions of the 1954 code which are included in the income-tax laws in force in Guam.

On the other hand, chapter 2 and section 931, both in subtitle A of the 1954 Code, and their predecessor provisions of the 1939 Code are specifically indicated as not constituting a part of the income-tax laws in force in Guam. Chapter 2 provides for a tax on self-employment income. Section 931 provides an exclusion from gross income in respect of income derived from sources outside the United States and received outside the United States by certain citizens of the United States deriving at least 80 percent of their income (not including Federal salaries) during a prescribed period from sources within a possession, including Guam, and at least 50 percent of their income from the active conduct of a trade or business (including the performance of services as an employee) in a possession, including Guam. Since it is made clear that section 931 and the corresponding provisions of prior law are not a part of the income-tax laws in

force in Guam, taxpayers will not be able to try to claim the exclusions provided in those sections in determining their income-tax liability to Guam. For example, a construction worker whose entire income for 1951 consisted of wages earned and received in Guam will not be entitled to exclude any part of that income from the computation of the income tax which be owed to Guam for that year, even though he was engaged in a trade or business there within the meaning of section 251 of the 1939 Internal Revenue Code and his income for the prescribed period met the percentage requirements stated in that section. On the contrary, all such income constitutes gross income reportable to the government of Guam. This is the effect obtained under subsection (d) (1); it is also the effect obtained under existing law as understood by the committee in the light of the legislative history of present section 31 of the Organic Act of Guam. Thus, in this respect as well as otherwise, the provisions of subsection (d) (1) are merely in confirmation of present law and of the original congressional intent in enacting section 31 of the Organic Act of Guam.

The specific mention of chapter 2 and section 931 of the 1954 code and of corresponding provisions of the 1939 code from the income-tax laws in force in Guam is not intended to exclude other provisions of the 1954 or 1939 codes from the category of provisions which are manifestly inapplicable or incompatible with the intent of Congress in making the income-tax laws of the United States applicable in Guam. Other provisions of the 1954 and 1939 codes which are manifestly inapplicable or incompatible with that intent (for instance, section 932 of the 1954 code and section 252 of the 1939 code) are also excluded even though not specifically singled out for mention.

Subsection (d) (2) and subsection (e) are complementary to subsection (c) and set up the mechanics of administering and enforcing the income-tax laws in Guam. Subsection (f) deals with the prosecution of criminal offenses and subsection (g) with liens. Subsection (h) gives the District Court of Guam exclusive original jurisdiction over suits and prosecutions in Guam involving the Territorial income tax. It also provides the means of recovery of taxes wrongfully assessed or collected by the government of Guam and for civil actions by it to collect its taxes.

Section 2 of the bill declares that subsections (b) to (g), inclusive, of section 1 express the true meaning and intent of section 31 as it has heretofore existed. Section 2 also ratifies the income taxes assessed and collected under section 31 and all acts done to effectuate their assessment and collection insofar as these are in accord with the amended section 31. Provision is made, however, that no penalties shall be imposed for failure to have complied with a requirement if it is judicially determined that, in the circumstances, that requirement could not lawfully have been made under the original section 31. This will not excuse failure to comply after 60 days from enactment of the bill.

EXECUTIVE COMMUNICATION

The executive communication of the Department of the Interior is set forth below in full:

Committee recommendation

The Committee on Interior and Insular Affairs recommends enactment of H.R. 12569, as amended.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 1, 1958.

Hon. SAM RAYBURN,

Speaker of the House of Representatives,
Washington, D C.

DEAR MR. SPEAKER: Enclosed herewith is a draft of a proposed bill, to amend section 31 of the Organic Act of Guam, and for other purposes.

I suggest that the proposed bill be referred to the appropriate committee for consideration, and I recommend that it be enacted.

The purpose of the proposed bill is to continue the present separate territorial income tax for the territory of Guam, as provided by section 31 of the Organic Act of Guam (48 U.S.C., sec. 1421i), but to add various clarifying provisions and, in addition, to give taxpayers who are subject to the tax certain remedies equivalent to those available under the United States income-tax laws.

Amendments which are contained in the proposed new subsections (a) through (g) of section 31 are for the purpose of clarification. They expressly provide, among other things, that the separate Guam income tax is to continue to be enforced by the Governor of Guam and officials of the Territorial government under him, and that these officials have available to them the enforcement powers as set forth in the Internal Revenue Code. The provisions in subsection (a) through (g) of section 31 accord with numerous judicial and administrative decisions, all of which are cited in an explanatory note attached hereto. We are aware of only one decision contrary to the holdings in the cited cases, namely, the recent decision of the Court of Claims on a preliminary motion in *Jennings et al. v. United States*. In denying the United States motion to dismiss the plaintiffs' petitions in that case,

the Court of Claims indicated the view that section 31 did not create a separate Territorial income tax. Although the Government of Guam is continuing to adhere to the long line of decisions to the contrary, the court of claims action has created considerable confusion in Guam and consequently enactment of the proposed bill has become urgent

Under the proposed subsection (h), taxpayers are given the right to contest their tax liability by suing the Government of Guam directly in the District Court of Guam for a refund of taxes collected. At present the only remedy available to a taxpayer in Guam is to sue the tax-collecting official of the Government of Guam.

A more detailed explanation of the proposed bill is enclosed herewith.

The Bureau of the Budget has advised that there is no objection to the presentation of this proposed legislation to the Congress.

Sincerely yours,

ROGER ERNST,

Assistant Secretary of the Interior.

EXPLANATORY NOTE TO ACCOMPANY BILL TO AMEND SECTION 31 OF THE ORGANIC ACT OF GUAM

Section 31 of the Organic Act of Guam (64 Stat. 384, 392, 48 U.S.C., sec. 1421i) reads as follows:

"The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam"

This section has been held to provide a separate Territorial tax to be enforced by the Government of

Guam, comparable to the income tax of the Virgin Islands enacted by the act of July 12, 1921 (47 Stat. 122, 123; 48 U.S.C, sec. 1397)

Laguana v. Ansell (D.C.Guam, 1952) 102 F. Supp. 919, *aff'd* (C.A. 9, 1954) 212 F.2d 207, *certiorari denied* 348 U.S. 830, 75 S.Ct. 51, 99 L.Ed. 654.

Wilson v. Kennedy (D.C.Guam, 1954) 123 F. Supp. 156 *aff'd* (C.A. 9, 1956) 232 F.2d 153.

Lamkin v. Brown and Root (C.A. 9, 1956) 233 F.2d 320.

Phelan v. Taitano (C.A. 9, 1956) 233 F.2d 117.

Holbrook v. Taitano (D.C.Guam, 1954) 125 F. Supp. 14.

Government of Guam v. Kaanehe (D.C.Guam, Appellate Division, 1956) 137 F.Supp. 189.

I.T. 4046 (1951-1 Cum.Bull. 57).

I.T. 2946 (Cum.Bull. X14-2, 109 (1935) (concerns Virgin Islands tax).

Rev.Rul. 8, 1953-1 Cum.Bull. 300, 301,

Rev.Rul. 56, 1953-1 Cum.Bull. 303.

Rev.Rul, 55-184, 1955-13 Int.Rev.Bull. 39, 1955-47 Int.Rev.Bull. 18.

Decision of the Comptroller General, B-126996, May 4, 1956.

The purpose of this bill to amend section 31 is to continue the tax provided by section 31 but to add clarification in accordance with the interpretations in the foregoing rulings and court decisions, and to authorize suits for refunds against the government of Guam.

Subsection (a)

The present section 31 is designated subsection (a) of the amended section.

Subsection (b)

Subsection (b) sets forth the basic interpretation of the present section 31 as presently enforced and as set forth in *Laguana v. Ansell* which in turn followed I.T. 4046 and I.T. 2946, the latter being with reference to the Virgin Islands tax. The last portion of the subsection designates a name for the separate tax for convenient reference.

Subsection (c)

Subsection (c) expressly designates the Governor of Guam as the official to enforce the tax. This authority he may delegate, including authority to redelegate. *Laguana v. Ansell* holds that the separate territorial tax is "to be collected by the proper officials of the Government of Guam." The present authority of other officials, under the Governor, is recognized in *Wilson v. Kennedy*.

The language is based on sections 7801 (a) and 7701 (a) (12) of the Internal Revenue Code of 1954.

Subsection (d) (1)

Paragraph (1) of subsection (d) defines "income-tax laws" mentioned in subparagraph (a) by referring to subtitles A, C, and P of the Internal Revenue Code of 1954, and the corresponding provisions of the Internal Revenue Code of 1939. An unconditional incorporation by reference not possible since various provisions refer to other taxes than income taxes, and the nomenclature throughout is with regard to the United States tax. Moreover certain provisions must be considered inapplicable in order to carry out the

intent of the separate tax. Thus in *Laguana v. Ansell*, supra, the court held that sections 251, 252, and 1621(a) (8)(B) of the 1939 code, dealing with exemptions for income earned in a possession of the United States, did not apply to the Territorial tax, although literally the plaintiff came within the provisions. In disposing of a preliminary motion in (*Jennings et al. v. United States*), the Court of Claims suggested otherwise with respect to section 931 of the 1954 Code (the successor to section 251), and this point is taken into account in subsection (d) (1) by the specific exclusion of section 931 from the Guam Territorial income tax.

Special reference is made to criminal provisions in view of their unique character in law. In *Government of Guam v. Kaanehe* they have been held to be incorporated by reference.

Reference to the Internal Revenue Code of 1939 is necessary in this paragraph and elsewhere in the bill, since it was in effect when the separate tax under section 31 went into effect on January 1, 1951, and constitutes the income-tax laws for the period prior to the effectiveness of the code of 1954.

The use of such qualifying terms as "where not manifestly inapplicable or incompatible"; "include but are not limited to"; "which correspond to one or more of those provisions", "applicable provisions"; and "corresponding provisions", in this paragraph and elsewhere in the bill is an obvious necessity and is similar to language used in the Internal Revenue Code of 1954. Thus:

> "Manifestly incompatibles": Sections 7701(c), 7851(b) (3), 78511 (b) (2) (C), 7852(b).

"All provisions * * * applicable to the administration, collection and enforcement": Sections 7651(1), 7651(2) (B).

"Corresponding provision: Sections 7851(e), 7852(b), 7807(b) (1) and (2).

Subsection (d) (2)

Paragraph (2) of subsection (d) des in with the reference, in paragraph (1) of subsection (d), to subtitle F, the enforcement provisions of the Internal Revenue Code of 1954. Paragraph (2) expressly indicates the intent that the Governor or his delegate has the same enforcement powers as United States tax officials. This is in accordance with the decision in *Wilson v. Kennedy*.

Paragraph (2) also authorizes the issuance of regulations by the Governor, in connection with the Guam Territorial income tax, and authorizes the Governor or his delegate to publish the text of the tax from time to time in whole or in part. He is thus authorized to adapt in written version the income-tax laws of the United States as the Guam Territorial income tax in accordance with the intent and under the terms of section 31.

The publication of such a text by the Governor is not intended to bc a prerequisite or condition to tax liability but only to afford a convenience to taxpayers.

Subsection (e)

Subsection (e) authorizes the substitution of nomenclature and other changes in language in applying the income-tax laws of the United States as the Guam Territorial income tax. This is an obvious necessity, and is in accord with *Wilson v. Kennedy* (I.T. 4046, and I.T. 2946).

Subsection (f)

Subsection (f) makes clear that the incorporation of the criminal provisions of the Internal Revenue Codes establishes offenses against the government of Guam to be prosecuted by officials of the government of Guam.

Subsection (g)

Subsection (g) makes clear that the tax lien provisions of the Internal Revenue Code apply in favor of the Government of Guam, and that notices of lien are to be filed with the clerk of the District Court of Guam.

The term "in the same manner and with the same effect" is used in section 7851(c) of the Internal Revenue Code of 1954.

Subsection (h) (1)

Paragraph (1) of subsection (h) gives the District Court of Guam exclusive original jurisdiction over all litigation in Guam concerning the Guam Territorial income tax, both civil and criminal. Jurisdiction of district courts elsewhere is covered in paragraph (4). At the present time the Island Court of Guam, a court created by the Guam Legislature, has jurisdiction over misdemeanors and suits involving sums up to $2,000. The purpose of this paragraph is to insure that jurisdiction as to all cases involving the Guam Territorial income tax shall be in the district court.

The language is suggested by title 28, United States Code, section 1340, with the additional of criminal jurisdiction.

Subsection (h) (2)

Paragraph (2) of subsection (h) provides that the Government of Guam may be sued for refund of taxes

and for payment of any final judgment in such litigation. At the present time it is probable that the Government would be held immune. *Crain v. Government of Guam* (195 F.2d 414). As a result the only remedy of the taxpayer is to sue the collecting official personally for refund, as was done in *Laguana v. Ansell* and *Wilson v. Kennedy*.

The language is based on title 28, United States Code, sections 1346(a) (1) and 2006, and section 7422(a) of the Internal Revenue Code of 1954.

Subsection (h) (3)

Paragraph (3) of subsection (h) precludes execution against an officer or employee of the Government of Guam against whom a judgment is obtained in a personal suit for a tax refund or for other acts in connection with enforcement of the Guam Territorial income tax. Instead, provision is made for payment of the judgment by the Government of Guam.

The language is based on title 28, United States Code, section 2006.

Subsection (h) (4)

Paragraph (4) of subsection (h) enables the Government of Guam to bring suit in any district court, constitutional or legislative, for collection of the Guam Territorial income tax or recovery of excessive refunds against tax delinquents who have left Guam. This will eliminate any problem of whether a State court may have jurisdiction over tax cases of another political entity.

Subsection (h) (5)

Paragraph (5) of subsection (h) precludes the Guam Legislature from divesting the District Court of

Guam of its jurisdiction over the Guam Territorial income tax.

Section 2

Section 2 of the bill provides an effective date for the provisions contained in section 1 and ratifies and confirms the authority of the Governor and officials and employees of the Government of Guam since January 1, 1951, the date the separate tax originally went into effect.

REAL ACTIONS--LIS PENDENS--RECORDATION

For text of Act see p. 801

Senate Report No. 2131, Aug. 4, 1958
[To accompany H.R. 7306]

House Report No. 1719, May 13, 1958
[To accompany H.R. 7306]

The Senate Report is set out.

Senate Report No. 2131

The Committee on the Judiciary, to which was referred the bill (H.R. 7306) to amend title 28 of the United States Code to provide that notice of an action with respect to real property pending before a United States district court must be recorded in certain instances in order to provide constructive notice of such action, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to provide that notice of an action (usually referred to as lis pendens) with respect to real property, pending before a United States district court, must be recorded; if the State law so provides, in order to be considered

constructive notice to others that such action is pending.

STATEMENT

The report of the Administrative Office of the United States Courts states that the Judicial Conference of the United States has considered and approved this legislation. The Department of Justice states that it would have no objection to the enactment of the bill, and the Department of the Interior in its report likewise states that that Department would have no objection to the enactment of the bill.

The justifications for this legislation appear in House Report No. 1719 on H.R. 7306, and are as follows:

> Present Federal law (28 U.S.C. 1962), makes provision for the recording of Federal judgments as liens on real property. This bill would make a substantially similar provision with respect to notice of the institution of suits (lis pendens) in the Federal district courts concerning real property.
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> The Committee on Revision of the Laws of the Judicial Conference of the United States considered this legislation and feels that it would make a very definite and needed improvement in the law, and the Judicial Conference, at its September meeting (1957) approved the legislation in principle. Thereafter the Honorable Albert B. Marie, circuit judge, appeared before Subcommittee No. 3 of the House Committee on the Judiciary on behalf of the Judicial Conference and testified in favor of the instant bill.
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> The legislation contains two requirements: (1) the State law must require that notice of local

suits in State courts (as distinguished front Federal courts) be registered, recorded, docketed, or indexed; and (2) the State law must also expressly authorize notice of Federal suits to be registered, indexed, etc., in the same manner as notices in State courts. These provisions, of course, will require future legislative action on the part of the individual State legislatures and they will not become effective within a State until it has expressly authorized such registering, recording, etc. This latter provision is necessary since Congress cannot properly seek to impose on State officers such as clerks of courts or registrars of conveyances, the duty of recording or indexing of Federal notices unless the States open the way and are willing to have their officers receive such papers.

In order that Federal litigants may obtain the same protection as is offered in State court actions, the bill provides that the State law authorizing the registering, etc., of Federal notices must be the same as that for registering of State notices in State court actions with respect to real property.

In many States real property can be situated great distances from the Federal courts and interested persons are oftentimes unaware that a suit way be pending therein affecting the property. This gives rise to the unfortunate situation of a plaintiff asserting a right against the property and, while the suit is pending, the property being sold to a third party, thereby rendering unenforceable whatever rights the plaintiff may later be adjudged to have against the property. In order to avoid such events and to insure the

proper enforcement of the orders of the courts, the instant bill provides for constructive notice so that all who seek either to buy the property or to secure its possession, or even to place a lien upon it, do so with notice of and subject to whatever rights the prior institution of the Federal action may have upon the property.